

**Air Pollution Control Advisory Council Meeting
May 8, 2003-2:00 p.m.-3:50 p.m.
Lee Metcalf Building-Room 111
Department of Environmental Quality (DEQ)**

ATTENDEES:

Council Members

Dean Johnson, Chairman
Linda Dworak
Kathy Harris
Mike Machler
Diane Lorenzen

Other Attendees

Howard Haines, DEQ
John Arrigo, DEQ
Charles Homer, DEQ
Deb Wolfe, DEQ
Paul Cartwright, DEQ
Bob Habeck, Secretary

1. Call to Order

Chairman **Dean Johnson** called the Air Pollution Control Advisory Council (APCAC) meeting to order on May 1, 2003 in Room 111 of the Metcalf Building in Helena, Montana. Members were present. Chris Kolstad, Mitchell Leu, Dave Noell and Brad Black were absent.

- a) The November 14, 2002 minutes were approved as written.
- b) New/Old Business-none

2. Housekeeping Remarks: Bob Habeck, Planning Prevention and Assistance Division (PPA), DEQ

- a) Mr. Habeck gave out the new calendar for this year. APCAC meetings are scheduled prior to Board meetings.
- b) Mr. Habeck introduced Rich Southwick, Conservationist member. He said Mr. Southwick's change of employment status enabled him to remain on the council, eliminating any conflict of interest issues.

3. Discussion Items:

(a) Legislative Bill Review:

SB 233- Environmental Penalties Fund

John Arrigo, Administrator of the DEQ Enforcement Division, discussed proposed legislation and a budget proposal. The Department proposes to have SB233 introduced which would divert \$110,000 in penalties collected under the Clean Air Act of Montana away from the Alternative Energy Revolving Loan Account and into the General Fund. A corresponding Executive Budget Proposal would replace \$110,000 of General Fund spending authority for the Enforcement Division with \$110,000 of Air Quality Fee spending authority. The purpose of this shift in spending authority is to reduce the General Fund expenditures by the Department to help address budget shortfalls. SB233 was tabled. However the budget proposal was passed. Because the Air Quality Fee account does not have sufficient funds to transfer to the Enforcement Division, EPA grant funds will be used by the Enforcement Division instead of fee money.

SB 71-Woodstove Certification/tax credit

Deb Wolfe of the Planning, Prevention and Assistance Division presented the next topic. She said the Legislature passed SB 506 in 2001, which granted tax credits for the purchase of certain, qualifying woodstoves. SB 506 effectively established emission standards for woodstoves that differed from existing EPA standards. Ms. Wolfe compiled a list of qualified woodstoves using EPA emission data. Ms. Wolfe suggested the existing law be amended to comply with existing EPA emission standards in defining qualifying woodstoves. Taxpayers who purchase woodstoves for residential use bearing stickers stating EPA-approval may apply for tax credit totaling 20% of the purchase of the stove up to a maximum of \$500. Taxpayer/purchasers are still subject to the local standards in counties that regulate woodstove purchase or operation.

SB 422- MTBE in Fuel Ban

Howard Haines of the Planning, Prevention and Assistance Division presented this topic. He said the main agency involved in this bill is the Montana Department of Transportation, because it works with transportation fuels. This bill was meant to ban all of MTBE in Montana. MTBE is used as a fuel additive to reduce carbon monoxide emissions in non-attainment areas. The proposal would require all state gas have a 10% blend of ethanol by 2005. The main impact of the bill was to protect the state from the dumping of MTBE and the associated cleanup costs. MTBE is found in trace amounts in all gasoline due to cross-contamination. Passing the bill would likely facilitate meeting some of the air standards in Missoula, Billings and Great Falls. Following second reading, the bill was tabled. The sub-committee did not want to impose further mandates on the public. A similar bill will likely be resurrected for the next legislature.

HB 502-Biodiesel in diesel fuel

Mr. Haines also presented the next topic. Mr. Haines reported the proposal called for a biodiesel 2% blend. The idea was based on Minnesota, which had some success in the generation of biodiesel. Biodiesel can be made from any vegetable or animal fat. The two producers are Montana Biodiesel and Storey Distributing Company. Biodiesel was supposed to help Montana when the EPA scheduled the low-sulfur diesel rule to be implemented in 2007. Biodiesel increases the viability of low-sulfur diesel. This bill was killed because it was poorly written. Although the bill is dead, the issue remains and a future this plan is anticipated. The Montana Department of Transportation is considering a pilot project to demonstrate the efficacy of biodiesel. DEQ will be working with them and other projects around the state. Some places/entities are already using biodiesel. The federal government is required to cut down the consumption of petroleum products by 2005 and uses biodiesel to accomplish that goal. The use of biodiesel requires no modifications to existing diesel vehicles.

HB 43-Revised Asbestos Control Act

Charles Homer, Air and Waste Management Bureau (AWMB), said this bill removed the requirement that the fees for permits be based on the actual cost of administering the permit. The Board of Environmental Review (Board) will review the cost of the fees for Asbestos Permits on a periodic basis.

HB 427-Permit Applications Subject to DEQ Action

Mr. Homer reported HB 427 established a 75-day final action for three types of permits (PSD/NSR permits, Permits subject to Federal Rules and Permits subject to state permitting rules, and permits that are subject to statutory requirements for incinerators). These permits utilize a 75-day period rather than a 60-period for processing. The extra 15 days is to be used for additional public comment. The Legislature instructed the Board of Environmental Review to adopt rules for a 30-day public comment period for those types of major permits. The actual 75-day final action period exists, but the 30-day comment period will not take effect until the Board adopts rules.

HB 437-Permits Consistent with Constitution

Mr. Homer said HB 437 amended a host of environmental statutes. The Clean Air Act provides that adequate remedies be employed for protection of the environment. The legislature added a new section to emphasize the protection of property rights and directed the Board to adopt rules for the same. Permit holders are now automatically made a party to any judicial challenge. Judicial challenges to air quality permits for large projects over \$1,000,000 will have precedence over other dockets on the court calendar. The judge may award court costs if it determines the challenge is not justifiable. A challenge must be filed in the county where the source is to be located. The bill might increase Department and Board travel costs because of the requirement to travel to the respective county.

HB 700-Revised Permit Appeals Process

Mr. Homer said HB 700 revised one of the requirements to the permit appeals process, allowing for a party to request hearing while construction of the permitted project continued. Formerly, the Department decision was not final if a petition for hearing filed. The action continued to be stayed until the Board issued a decision on the petition challenging Department action. HB 700 removed that provision. Parties have 15 days to take action before the permit is deemed final. The Legislative intent was to provide the Department with the authority to either issue general permits or simple registrations. HB 700 gives the department more tools to use for different sources, presumably saving time and fieldwork. However, construction on permitted projects is not allowed to take place until the 15 day appeals period closes.

(b) **See NSR Reforms description below.**

(c) **Greenhouse Gas Plan**

Paul Cartwright, Energy and Economic Analysis Section, said DEQ is currently not proceeding with finalizing a Greenhouse Gas Plan. The Legislature has not provided direction to proceed. The Department compiled an inventory in January 1997 and secured a grant to work on the inventory. The plan is currently in draft form. The Department implements programs that influence the production of Greenhouse gas but they are not part of a Greenhouse Gas Plan. The draft plan contains transportation, land use, and electricity issues. The greenhouse effect is not changing at a very dramatic rate. Some states have set targets and some have Greenhouse gas registries, which work something like SO₂ credits. Montana administers a voluntary program. DEQ has training procedures for Greenhouse

gas reduction techniques. DEQ works on reducing Greenhouse Gases but cannot put a plan in place to actively regulate it without Legislative direction. People generally do not attend to the rate of global warming.

4. Rulemaking Action Items:

(a) AWMB Rule Development Schedule

Air Operation & Major Open Burning Fee Rules

Charles Homer, AWMB, stated that permitting fees fund a significant portion of the Air Quality Program. The first is an annual fee and the other is an application fee. Operation fees are a base fee of \$400 accompanied by a fee on each ton of pollutant emitted. The Legislature does not allow funds to be carried over from year to year. The fee is based on the legislative appropriation and the previous year's source emissions data. The "per ton" fee will be around \$20. The Department intends to propose fees to the Board in June with final Board action expected in September. The department is required to "zero out" the appropriation (budget) at the end of the year. Any carryover funds are returned to the general fund. Other states are allowed to carry balances forward to the next fiscal year. State government has a flat staff and can't expand quickly. Fees fund the Air Quality program based on facilities' environmental impact. According to statute, the application for permit must be accompanied by fees. However, landfills pay an annual fee to Solid Waste who, in turn, contributes a portion to the Air program.

HB 427-30 day Comment & 75-day Final Decision for Majors; Service of Notice
HB 427 establishes a 30-day comment period for three types of permits and provides for a 75-day process. The rule will change how notice is provided on certain permits. The Department also wishes to serve notice by regular mail.

ARM 17.8.309, 310-Process Weight & Fuel Burning Revision

This is the first air quality rule passed. The rule establishes emission standards based on process weight and fuel burning for any source in which a BACT determination has not been made. EPA refuses to approve the revisions to the rule into the SIP. The department can't have conflicting rules. DEQ is still trying to figure out what to do.

MACT "Hammer" Rule

In December, EPA settled a court case with the Sierra Club. The final rule is supposed to be published this week. EPA is directed to promulgate remaining MACT standards by May 15, 2003. EPA needs to revise their rules in response to the court case. The current federal rule obliges states to promulgate MACT standards in the absence of EPA promulgation. As soon as EPA rules are published, states may move forward on MACT applications.

Yellowstone County Program

Yellowstone County wants to propose some changes to their air quality rules. In an effort to downsize the program in 2001, the county eliminated several rules and turned the associated tasks over to the state. The county now has a new director

and is reassessing its decision in order to regain some authority over permits and other air quality regulatory tasks.

Mont. Code Ann. 75-2-231-Additional Permit Requirement for Commercial Medical & Hazardous Waste Incinerators

Currently, no sources exist in the state subject to this provision. However, DEQ will approach the Board to initiate rulemaking. The bill that initiated this process was controversial because proposed rules may target facilities that have a high profile and the potential for increased public scrutiny.

HB 700 General Permit- gravel crushers, screens and compressor engines

This bill will be looked at in June. December board meeting before this bill will be finalized.

New Source Review (NSR) Reforms

EPA has published proposed changes to the NSR Rules, including the Routine Maintenance Repair & Replacement (RMRR) rule. The comment period on the proposed RMRR Rule just closed. This rule seeks to allow more regulatory flexibility for RMRR without subjecting a permit holder to NSR requirements. Currently, sources can only look back to the previous two years to establish emission trends as affected by equipment changes characterized as RMRR. In the new rule, sources may look back at any previous two-year period for emissions trend data. The published NSR rule established a plant-wide applicability limit (PAL) for an entire facility. A facility can change sources of emissions as long as it doesn't exceed the total emissions limit for the facility as a whole. For example, if a source installed a new piece of equipment or serviced an existing piece of equipment, it would not have to go through NSR as long as the emissions don't exceed the total PAL. The rule will also exempt pollution prevention equipment and projects. The rule should be finalized in December or early next year.

5. Confirm next meeting date July 17, 2003

The next meeting date was confirmed and the meeting was adjourned at 3:50 p.m.